

Court No. - 10

Case :- WRIT - C No. - 17692 of 2023

Petitioner :- Yashwant Singh And 13 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rahul Jain

Counsel for Respondent :- C.S.C.,Deepak Kumar

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Rahul Jain, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Sri Prabhakar Awasthi, learned counsel for the respondents no.4 and 5 and perused the record.

2. Counter and rejoinder affidavits in between the parties have been exchanged and the original record produced on earlier occasions has also been placed before the Court and has been perused, therefore, the writ petition is being finally decided.

3. There are various facts on record, however, in order to cut short the controversy, only those facts shall be mentioned which are necessary for pronouncing the final judgment in the present case.

4. It is contended by Sri Rahul Jain that a Society, namely, Martand Vidyalaya Churiyani Samiyana, runs an intermediate college in the name and style of Martand Vidyalaya Inter College, Churiyani Samiyana, Fatehpur. He submits that the term of the Committee of Management of the Institution is five years, whereas the term of the office bearers of the society is three years and the last elections concerning the institution as well as the society were held in the year 2015 in which the respondent no.5 was elected as Manager.

5. Though, Sri Jain does not dispute the fact that after the term of the Committee of the Institution elected in 2015 ended in 2020, after due agenda, the elections of the Committee of the Institution were held on 22.11.2020 and the respondent no.5 was elected as Manager, the dispute raised by the present writ petition relates to the elections allegedly held in relation to the Society on 22.11.2020.

6. Whereas, Sri Jain contends that the said elections were held without there being any agenda and their proceedings were

produced for registration before the Assistant Registrar for the first time in the year 2022, Sri Awasthi submits that the petitioners were granted full opportunity pursuant to the notice issued by the Assistant Registrar in terms of the proviso attached to Section 4-A(2) of the Act but the petitioners kept mum for years, one after another, and when now certain new members have been enrolled by the society headed by the respondent no.5, the dispute has been raised. Sri Awasthi submits that the complaint moved by the petitioners in the year 2022 has been rejected as baseless by the order impugned after perusing the relevant documents as well as examining the stand taken by both the sides.

7. Sri Jain has raised various submissions, one of which is alleged violation of the principles of nature justice, that is to say that, according to him, the written statement filed by the respondent no.5 was taken on record on 27.07.2022 about which no opportunity was provided to the petitioner. The other argument is that no meeting in relation to the elections of the society was held on 22.11.2020 and agenda concerning the same was forged. He has placed reliance upon various affidavits filed by certain members in this regard.

8. Sri Jain further submits that considering the nature of the dispute, even if the Assistant Registrar was not satisfied with the stand taken by the petitioner, he could not have attached validity of elections dated 22.11.2020 in relation to the society and, therefore, the finding to that effect recorded in the order impugned is wholly without jurisdiction and the order impugned is unsustainable.

9. Sri I.P. Srivastava, learned Additional Chief Standing Counsel, submits that the Assistant Registrar followed the due procedure of law and the order impugned records the stand taken by both the sides. He further submits that principles of nature justice were not violated and every proceeding was held in the presence of parties and they signed the relevant order sheet.

10. Sri Awasthi has raised various submissions in opposition to the writ petition. One of his arguments is that the Assistant Registrar has exercised the power under Section 4 of the Act, as amended in the State of U.P., and the other argument is that even if the petitioners are aggrieved by the elections dated 22.11.2020, once the Assistant Registrar has already observed that they may approach the Prescribed Authority by establishing 1/4th strength of members in their favour, under Section 25(1) of the Act, the petitioners are not remediless. He further submits that in case the petitioners' contention to the effect that if no elections were held

after 2015, the term of the Society, according to the petitioners, expired in 2018 and then in 2021, the claim made by the petitioners' side at such a belated stage, that is for the first time in 2022, is highly belated and cannot sustain on this ground alone. Sri Awasthi has also disputed the contention of the petitioners with regard to the term of the office bearers of the society by referring to the alleged amended bye-laws which, according to him, were not amended according to law and even have not been registered in the office of Assistant Registrar and, therefore, according to Sri Awasthi, term would expire in 2025, it being five years.

11. Having heard the learned counsel for the parties, following position stands emerged:-

(i) There is no rival Committee of Management and the only Committee is headed by respondent no.5 at the moment.

(ii) There is no dispute regarding elections dated 22.11.2020 in relation to the Committee of Management of the educational institution, i.e. intermediate college.

(iii) The dispute raised is only in respect to the elections held/ not held in relation to the society on 22.11.2020.

(iv) The term of the office bearers elected in the elections allegedly held on 22.11.2020, may be three years or five years, has not yet expired.

12. In the light of the aforesaid facts, I find that the last two lines of the impugned order passed by the Assistant Registrar approving the elections dated 22.11.2020 appear to be contrary to the proviso attached to Section 25(1) of the Act as the said provision empowers only the Prescribed Authority to decide in a summary manner any issue or dispute in respect of the elections or continuance in office of an office bearer of such society if any of the conditions stipulated in clause (a), (b) and (c) exists.

13. The arguments of the petitioners are mainly based upon sub-clause (a) of the proviso. Therefore, any finding recorded with regard to the validity of the elections of the society held on 22.11.2020 or otherwise could be recorded only by the Prescribed Authority and not by the Assistant Registrar.

14. In so far as the liberty granted to the petitioners to approach the Prescribed Authority under Section 25(1) of the Act at the strength of 1/4th members, Sri Rahul Jain has placed reliance upon a

judgment of the Division Bench of this Court in the case of **Gram Shiksha Sudhar Samiti, Junior High School, Sikandra, District Kanpur Dehat and another Vs. Registrar, Firms, Societies and Chits, U.P. Lucknow and others: 2010(7) ADJ 643**. He submits that in that case the learned Single Judge had held that the Assistant Registrar should have referred the matter to the Prescribed Authority but even then he declined to set aside the order of the Assistant Registrar and this part of the order of the learned Single Judge was set aside by the Division Bench and, therefore, this Court should direct the Assistant Registrar to make a reference to the Prescribed Authority and the order impugned should be set aside.

15. In this regard, Sri Prabhakar Awasthi, learned counsel submits that there cannot be a vacuum in the society and once the order impugned is set aside and the matter is referred to the Prescribed Authority, either by this Court or by the Assistant Registrar under the directions of this Court, the effect would be that members enrolled by the respondent no.5 would become invalid members and there would be a vacuum.

16. After considering the submissions advanced, I find that there being no election dispute to the elections of the Committee of Management of the intermediate college run by the society, there cannot be any vacuum in the institution at least. The alleged vacuum argued by Sri Awasthi in relation to the affairs of the society is certainly dependent upon the adjudication which can be made only by the Prescribed Authority. As regards enrollment of members by the respondent no.5, it is informed to the Court that such a dispute has otherwise been raised by the petitioners which is still pending before the Assistant Registrar.

17. The writ petition is, accordingly, **disposed of** in the following terms:-

(a) The order impugned dated 10.08.2022 passed by the Assistant Registrar, Firms, Societies and Chits, Prayagraj Mandal, Prayagraj (respondent no.2) **to the extent** it attaches validity to the elections dated 22.11.2020 concerning the Society, being without jurisdiction, is **set aside**.

(b) The Assistant Registrar is directed to **refer** the matter and place all the documents before the Prescribed Authority under Section 25(1) of the Act within a period of **one month** from today.

(c) The Prescribed Authority shall register the reference and shall

issue notice to both the parties immediately thereafter.

(d) The reference shall be decided on merits strictly in accordance with law only after providing full opportunity of hearing to the parties, within a period of **next four months** after both the parties put in appearance and submit their written statements/ reply etc.

(e) Till disposal of the reference, **status quo** with regard to the affairs of the society shall be **maintained**, in view of the peculiar facts of this case.

18. Original record has been returned to the learned Additional Chief Standing Counsel for the purposes of remittance to the concerned authority.

Order Date :- 30.10.2023

AKShukla/-